

NO. 24566

IN THE SUPREME COURT OF THE STATE OF HAWAII

AIG HAWAII INSURANCE COMPANY, INC.,
Plaintiff-Appellee,

vs.

EMERSON M.F. JOU, M.D., dba COMPREHENSIVE CLINIC OF
REHABILITATION MEDICINE and/or THE REHAB CLINIC,
Defendant-Appellant,

and

ROXANNE BERTLEMAN, STEPHENIE BURT, ROSALINDA CACAL
(ALSO KNOWN AS ROSALIDA CADAL WHITE), JEFF CALLAHAN,
JULIE DEBARI, FLOYD DIMALANTA, WARNICE HANAMAIKAI (ALSO
KNOWN AS PUALA HANAMAIKAI), PATRICIA HARLAN, VICTOR KOSAKA,
SUSAN LOVINGER, PATRICIA MEDINA, WEILING ZHENG, JOHN DOES 1-20
AND DOE PARTNERSHIPS, CORPORATIONS, or OTHER ENTITIES 1-20,
Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-3416)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Defendant-appellant Emerson M.F. Jou, M.D., dba
Comprehensive Clinic of Rehabilitation Medicine and/or The Rehab
Clinic (Dr. Jou) appeals from the September 12, 2001 final
judgment of the First Circuit Court in this declaratory judgment
action.¹ The circuit court granted AIG Hawaii Insurance Company,
Inc. (AIG's) motion for summary judgment and entered a final
judgment which precluded Dr. Jou from "(1) employing and
utilizing massage therapists to perform the work of physical

¹ The Honorable Gary Chang presided over the matter.

therapists without proper licensure, and (2) [] improperly bill[ing] Plaintiff AIG [] for said services.” Dr. Jou contends that the circuit court erred by: (1) ruling that massage therapists employed by a physician cannot bill using codes for physical therapists; (2) ruling that Hawaii’s physical therapist or massage therapist licensure or regulation limits payments by AIG for physical therapy services to persons licensed as physical therapists; (3) ruling that Hawai’i Revised Statutes (HRS) § 436B-26 (1993) does not allow physicians or the licensed massage therapists they employ from recovering for the same massage therapy services provided by physical therapists; (4) ruling that neither Dr. Jou nor the licensed massage therapists are practicing physical therapy, as defined by HRS § 461J-1 (1993), when they performed massage therapy and used physical therapist payment codes; and (5) violating Dr. Jou’s federal and state constitutional rights to due process of law and equal protection.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) Dr. Jou improperly billed AIG for physical therapy services which were provided by massage therapists employed by him who were not licensed as physical therapists; consequently, AIG does not have a duty to compensate Dr. Jou for such unlicensed activity, see HRS § 436B-26; HRS § 452-1 (1993); HRS § 461J-1; and HRS § 453-1 (1993); and

(2) Dr. Jou did not raise his constitutional arguments before the circuit court, such that these arguments are deemed waived on appeal. Bitney v. Honolulu Police Dept., 96 Hawai'i 243, 251, 30 P.3d 257, 265 (2001); Hill v. Inouye, 90 Hawai'i 76, 82, 976 P.2d 390, 396 (1998). Furthermore, assuming arguendo that the constitutional issues were not waived, this court would disregard the claim because Dr. Jou failed to present a discernable argument beyond stating that there was a violation of his rights, State v. Bui, 104 Hawai'i 462, 464 n.2, 92 P.3d 471, 473 n.2 (2004); State v. Moore, 82 Hawai'i 202, 206 n.1, 921 P.2d 122, 126 n.1 (1996); State v. Jackson, 81 Hawai'i 39, 46, 912 P.2d 71, 78 (1996). Therefore,

IT IS HEREBY ORDERED that the circuit court's September 12, 2001 final judgment is affirmed.

DATED: Honolulu, Hawai'i, August 24, 2004.

On the briefs:

Stephen M. Shaw
for defendant-appellant

David J. Minkin
and Paul B.K. Wong
(of McCorriston Miller
Mukai MacKinnon LLP)
for plaintiff-appellee